

**AGENCY AGREEMENT FOR COUNTYWIDE  
AB939 IMPLEMENTATION FEE**

This Agreement is made by and among the Cities and Towns of Campbell, Cupertino, Gilroy, Los Altos, Los Altos Hills, Los Gatos, Milpitas, Morgan Hill, Monte Sereno, Mountain View, Palo Alto, San Jose, Santa Clara, Saratoga, and Sunnyvale (CITIES) and the County of Santa Clara (COUNTY) on the \_\_\_\_\_ day of \_\_\_\_\_ 2006. The term CITIES may refer to CITIES collectively or individually.

**RECITALS**

WHEREAS, pursuant to Public Resources Code Section 41901, a city, county, or city and county may impose fees in amounts sufficient to pay the costs of preparing, adopting, and implementing an integrated waste management plan; and

WHEREAS, the Board of Supervisors established the Countywide AB939 Implementation Fee effective July 1, 1992 to fund local costs of preparing, adopting, and implementing integrated waste management plans and programs; and

WHEREAS, the Solid Waste Commission of Santa Clara County has determined that a Countywide AB939 Implementation Fee (Fee) is necessary, pursuant to Public Resource Code 41901, to assist in funding the costs of preparing, adopting and implementing integrated waste management plans and programs in the fifteen cities and the unincorporated area of the county; and

WHEREAS, the Fee shall be imposed on each ton of waste landfilled or incinerated within the county; received at any non-disposal or collection facility located within the County and subsequently transported for disposal or incineration outside of the County; collected from any location within the County by a solid waste hauler operating pursuant to a franchise, contract, license, or permit issued by any local jurisdiction and subsequently transported for disposal or incineration outside of the County; or removed from any location in the County by any person or business for disposal or incineration outside the County; and

WHEREAS, state law requires jurisdictions to plan and implement household hazardous waste (HHW) services; and

WHEREAS, HHW programs provide household hazardous waste management services to residents of Santa Clara County and are necessary services to enable jurisdictions to meet the requirements of state law; and

WHEREAS, jurisdictions in Santa Clara County desire to provide safe, convenient, and economical means for residents to properly dispose of household hazardous wastes in an environmentally safe manner in order to avoid unauthorized or improper disposal in the garbage, sanitary sewer, storm-drain system, or on the ground, in a manner which creates a health or environmental hazard. These wastes include, but

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are not limited to, common household products such as household cleaning products, spot remover, furniture polish, solvents, oven cleaner, pesticides, oil based paints, motor oil, antifreeze, fluorescent lamps, and car batteries; and

WHEREAS, the County will collect the Fee on behalf of the fifteen cities and the unincorporated area and will apportion the Fee according to the terms of this Agreement.

NOW, THEREFORE, CITIES and COUNTY OF SANTA CLARA AGREE AS FOLLOWS:

## **1. PURPOSE**

The purpose of this Agreement is to state the terms and conditions under which the COUNTY will collect and distribute the Fee of \$3.72 per ton in FY 2007 and \$3.35 per ton in FY 2008 and FY 2009 of waste to be disposed. The Fee is divided into two parts: 1) a Program Fee of \$1.50 per ton to assist in funding the costs of preparing, adopting, and implementing the integrated waste management plan in the fifteen cities and the unincorporated area of the County; and 2) a HHW Fee of \$2.22 per ton in FY 2007 and \$1.85 per ton in FY 2008 and FY 2009 to provide funding to implement the Countywide HHW Program. The Program Fee will be allocated among jurisdictions as described in Exhibit B. The HHW Fee will be allocated to the COUNTY, CITIES, and Countywide HHW Program and Participating Jurisdictions as described in Exhibit C. The Fee shall be imposed on each ton of waste landfilled or incinerated within the County; received at any non-disposal or collection facility located within the County and subsequently transported for disposal or incineration outside of the County; collected from any location within the County by a solid waste hauler operating pursuant to a franchise, contract, license, or permit issued by any local jurisdiction and subsequently transported for disposal or incineration outside of the County; or removed from any location in the County by any person or business for disposal or incineration outside the County. Non-disposal facilities are defined as those facilities included in the County of Santa Clara Non-Disposal Facility Element (and subsequent amendments to that Element).

## **2. SERVICES PROVIDED BY COUNTY**

COUNTY will collect and distribute the Fee. COUNTY will collect the Fee from landfills and non-disposal facilities listed in Exhibit A, and any landfill or non-disposal facility subsequently permitted, on a quarterly basis using data from tonnage reports filed by landfill and non-disposal facility operators with the County Integrated Waste Management Division. The COUNTY shall require each landfill and non-disposal facility to submit required payment, documentation of tonnages disposed, and state-mandated Disposal Reporting System Reports on a quarterly basis, within 45 days of the end of each calendar quarter. Late submissions and/or payments shall be subject to a late filing penalty and delinquent penalties. COUNTY will research Santa Clara County tonnage reported to COUNTY by landfills outside the COUNTY in significant amounts to determine the identity of the hauler. That hauler will

subsequently be billed in the same fashion subject to the same penalties as mentioned above. Collected funds and any late filing payments and delinquency penalties shall be distributed to CITIES and Countywide HHW Program based on the formula set forth in Exhibits B and C. COUNTY shall not be obligated to distribute funds that COUNTY has been unable to collect from landfill or non-disposal facility operators.

### **3. ROLE OF CITIES**

CITIES shall review the Disposal Reporting System Reports as prepared and submitted by the COUNTY and shall report to COUNTY, with appropriate documentation, errors in waste allocations among jurisdictions within 30 days of receipt.

### **4. COLLECTION AND USE OF FEE**

Each ton of waste will be subject to the Fee. Best efforts will be made to prevent tonnage from being assessed a double fee (once at a non-disposal facility and again at a landfill within Santa Clara County). The Program Fee funding share paid to CITIES shall be used to assist in funding the costs of preparing, adopting, and implementing the integrated waste management plan of each of the CITIES and the unincorporated area of the COUNTY. The HHW Fee portion shall assist in funding the costs of each city's share of HHW operations.

### **5. INSURANCE**

Each party shall maintain its own insurance coverage, through third party insurance, self-insurance or a combination thereof, against any claim, expense, cost, damage or liability arising out of the performance of its responsibilities pursuant to this Agreement.

### **6. INDEMNIFICATION**

In lieu of and notwithstanding the pro rata risk allocation which might otherwise be imposed between CITIES and COUNTY pursuant to Government Code Section 895.6, the parties agree that all losses or liabilities incurred by a party shall not be shared pro rata but instead the parties agree that each of the parties hereto shall fully indemnify and hold each of the other parties harmless from any claim, expense or cost, damage or liability arising out of, or in connection with, performance of its responsibilities pursuant to this Agreement.

Additionally, CITY shall indemnify, hold harmless, and defend COUNTY, its officers, agents, and employees with respect to any loss, damage, liability, cost or expenses, including attorney fees, arising from misuse of the Fee distributed to CITIES. COUNTY shall indemnify, hold harmless, and defend CITIES, its officers, agents, and employees with respect to any actions brought by third parties based on COUNTY's negligence in the collection or distribution of said Fees.

## **7. DISTRIBUTION OF FEE**

COUNTY shall distribute the Fee to CITIES and the Countywide HHW Program pursuant to the formulas described in Exhibits B and C within 45 days of receipt of landfill and non-disposal facility payments and disposal documentation required for calculation of Fee distribution amounts. Distributions shall begin in December 2006, and continue quarterly through August 2009.

## **8. PARTICIPATION IN THE COUNTYWIDE HHW PROGRAM**

CITIES, at their option, may individually participate in the Countywide HHW Program by entering into the AGENCY AGREEMENT FOR COUNTYWIDE HOUSEHOLD HAZARDOUS WASTE COLLECTION PROGRAM. Regardless of whether CITIES enter into the Agreement, CITIES's share of funds collected for Abandoned Waste Disposal Costs will be paid directly to the Countywide HHW Program as described in Exhibit C, Section 3.

## **9. LATE PAYMENTS**

If Fee payments and disposal documentation are not received from landfill or non-disposal facility operators prior to scheduled distribution of payments to CITIES and the Countywide HHW Program, payment distribution shall be calculated on a pro rata share of monies received. Upon collection, late payments and accrued delinquent penalties, if any, shall be distributed among CITIES and the Countywide HHW Program according to the formula in Exhibits B and C.

## **10. ACCOUNTING**

COUNTY shall maintain records of all transactions related to collection and distribution of the Fee for at least five (5) years after the termination date of this Agreement, unless otherwise required by law to retain such records for a longer period. Such records will be available for inspection upon written request by CITIES, and will include but not be limited to tonnage reports submitted by landfills and non-disposal facilities, waste stream documentation provided by cities, and payments made by the landfills and non-disposal facilities to the COUNTY and by the COUNTY to CITIES.

## **11. REQUEST FOR REVIEW**

In the event CITIES have a dispute regarding the calculation of its share of the Fee, CITIES may request in writing a review by COUNTY within 10 days of receipt of their Fee allocation. The review shall be performed within 30 days of request and results shall be reported to CITIES in writing

## **12. EFFECTIVE DATE OF AGREEMENT**

This agreement takes effect only upon approval by all fifteen cities and the COUNTY.

## **13. AMENDMENT**

This Agreement may be amended only by an instrument signed by the parties.

## **14. INDEPENDENT CONTRACTOR**

Each party shall perform responsibilities and activities described herein as an independent contractor and not as an officer, agent, servant or employee of any of the parties hereto. Each party shall be solely responsible for the acts and omissions of its officers, agents, employee, contractors and subcontractors, if any. Nothing herein shall be considered as creating a partnership or joint venture between the parties.

## **15. TERM OF AGREEMENT**

The term of this Agreement shall be from July 1, 2006 to August 31, 2009, or until all funds from the last quarter's Fee payments have been distributed, whichever is later. COUNTY shall bill the operators of the landfills and non-disposal facilities listed in Exhibit A for the Fee commencing with the Quarter ending September 30, 2007. Said landfills and non-disposal facilities will be billed for the Fee through June 30, 2009.

## **16. EXTENSION OF TERM**

This Agreement may be extended in three-year extensions upon written agreement of COUNTY and all 15 CITIES.

## **17. NOTICES**

All notices required by this Agreement will be deemed given when in writing and delivered personally or deposited in the United States mail, postage prepaid, return receipt requested, addressed to the other party at the address set forth below or at such address as the party may designate in writing in accordance with this section.

City of Milpitas

Contact: Greg Armendariz

Title: Director of Public Works/City Engineer

Address: 455 E. Calaveras Blvd. Milpitas, CA 95035

County of Santa Clara

Contact: Program Manager

Program: Integrated Waste Management Division

Address: 1735 N. First Street, Suite 308

City: San Jose, CA 95112

**18. CONTROLLING LAW**

This Agreement shall be governed and construed in accordance with the laws of the State of California.

**19. ENTIRE AGREEMENT**

This document embodies the entire Agreement between the parties with respect to the subject matter hereof. No modification of this Agreement shall be effective unless and until modification is evidenced by writing signed by all parties or their assigned designates.

**20. COUNTERPARTS**

This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this **AGENCY AGREEMENT FOR COUNTYWIDE AB939 IMPLEMENTATION FEE** on the dates as stated below:

"COUNTY"

COUNTY OF SANTA CLARA,  
a political subdivision of the  
State of California

By: \_\_\_\_\_  
James T. Beall, Jr., Chair  
Board of Supervisors

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Phyllis A. Perez  
Clerk of the Board of Supervisors

Date: \_\_\_\_\_

APPROVED AS TO FORM AND LEGALITY:

*Kathy Kretchmer*

Kathy Kretchmer  
Deputy County Counsel

Date MAR 20 2006

"CITY"

CITY OF \_\_\_\_\_  
a municipal corporation.

by: \_\_\_\_\_

\_\_\_\_\_  
Title: \_\_\_\_\_ Date: \_\_\_\_\_

## **EXHIBIT A**

### **LANDFILLS LOCATED IN SANTA CLARA COUNTY**

Guadalupe Rubbish Disposal Site  
Kirby Canyon Sanitary Landfill  
Newby Island Sanitary Landfill  
Pacheco Pass Sanitary Landfill  
Palo Alto Refuse Disposal Area  
Zanker Materials Processing Facility  
Zanker Road Landfill

### **NON-DISPOSAL FACILITIES AND TRANSFER STATIONS LOCATED IN SANTA CLARA COUNTY**

Butterick Enterprises Recyclery  
California Waste Solutions Recycling & Transfer Station  
City of Palo Alto Green Composting Facility  
ComCare Farms Composting Facility  
Environmental Management Systems Facility  
Green Waste Recovery Facility  
Mission Trail Waste Systems, Inc.  
Newby Island Compost Facility  
Pacheco Pass Landfill Composting Facility  
Pacific Coast Recycling, Inc.  
Premier Recycling Facility  
The Recyclery at Newby Island  
San Martin Transfer Station  
Sunnyvale Materials Recovery and Transfer Station (SMaRT Station)  
Z-Best Composting Facility  
Zanker Materials Processing Facility



## **EXHIBIT B**

### **FORMULA FOR DISTRIBUTION OF AB939 PROGRAM FEE**

Each jurisdiction located in Santa Clara County will receive \$1.50 per ton of solid waste disposed of in landfills or taken to non-disposal facilities located in Santa Clara County that originates from that jurisdiction, as documented in quarterly reports submitted by the County to the State Disposal Reporting System.

Fees collected from undocumented disposed tonnage, or tonnage originating outside of Santa Clara County, will be distributed according to each jurisdiction's percent of countywide population, according to the latest available population report issued by the California Department of Finance.

## **EXHIBIT C**

### **COUNTYWIDE HOUSEHOLD HAZARDOUS WASTE PROGRAM FEE (HHW Fee)**

#### **1. PROGRAM FUNDING SOURCE**

HHW Program services are directly mandated under AB939, which establishes statutory authority to provide for funding to support planning and implementation of integrated waste management programs. The HHW Fee, \$2.22 per ton in FY 2007 and \$1.85 per ton in FY 2008 and FY 2009, collected as part of the AB939 Implementation Fee, will be the primary source of funding for CoHHW Program services.

Funds derived from the HHW Fee will be allocated among five types of CoHHW Program service costs as follows:

- A. Fixed Program Costs will be apportioned based on the number of households in each participating jurisdiction. The number of households will be determined at the beginning of each Fiscal Year by statistics compiled by the Department of Finance, Demographic Research Unit in their most recent Report, "Population Estimates for California Cities and Counties."
- B. Abandoned Waste Disposal Costs will fund disposal of HHW illegally abandoned at nonprofit charitable reuse organizations. The existing fund balance from previous years will fund the Abandoned Wastes Disposal Costs for fiscal years 2007 to 2009. The \$.12 per household Abandoned Waste Disposal apportionment for Fiscal Year 2007 will be redirected to the Facility Closure Cost Account. The apportionment for Fiscal Years 2008 to 2009 will be redirected to the City Discretionary Fund.
- C. Facility Closure Costs will cover the estimated cost of closing the three County Household Hazardous Waste Collection Facilities (CoHHWCF) when the time comes. The \$.12 per household Abandoned Waste Disposal apportionment for Fiscal Year 2007 will be redirected to this account to satisfy Permit By Rule requirements [California Code of Regulations, Title 22, sections 67450.25 (a) (2) (E) and 66265.110-66265.115].
- D. Variable Cost Per Car to provide a base level service to 3% of households in all participating jurisdictions.
- E. Available Discretionary Funding funded on tonnage generated per participating jurisdiction.

## **2. FIXED PROGRAM COST**

Funds shall be distributed on a per household basis for Fixed Program Costs. This portion of the funds shall be distributed directly to the Countywide HHW Program. Fixed Program Costs funding shall be calculated at \$1.68, \$1.73, and \$1.77 per household for fiscal years 2007 through 2009 respectively. Fixed Program Costs may include, but are not limited to six (6) CoHHW Program staff members, facility leasing costs, vehicle lease costs, office rent, office supplies, county administrative overhead, county legal counsel, program publicity, training costs, equipment and facility maintenance, and union negotiated salary and benefit increases.

## **3. ABANDONED WASTE DISPOSAL COST**

The existing unexpended abandoned waste fund balance of \$210,000 will fund disposal of HHW illegally abandoned at nonprofit charitable reuse organizations for FY 2007 through FY 2009. The \$.12 per household Abandoned Waste Disposal apportionment for Fiscal Year 2007 will be redirected to the Facility Closure Cost Account. This portion of the funds shall be distributed directly to the Countywide HHW Program. All jurisdictions throughout the COUNTY contribute to this cost including jurisdictions not participating in the AGENCY AGREEMENT FOR COUNTYWIDE HOUSEHOLD HAZARDOUS WASTE COLLECTION PROGRAM. The apportionment for Fiscal Years 2008 to 2009 will be suspended, and funding will be redirected to the City Discretionary Fund.

For the purposes of this agreement, the PUBLIC RESOURCES CODE SECTION 41904 defines a nonprofit charitable reuse organizations as follows: "Nonprofit charitable reuser" means a charitable organization, as defined in Section 501(c)(3) of the federal Internal Revenue Code, or a distinct operating unit or division of the charitable organization, that reuses and recycles donated goods or materials and receives more than 50 percent of its revenues from the handling and sale of those donated goods or materials.

## **4. FACILITY CLOSURE COST**

The Facility Closure Costs are costs associated with the closing of the three HHW facilities when the time comes and is required by Permit-by Rule Regulations. During the first three years of the AB939 Implementation Fee for HHW services, \$20,000 per year was set aside to pay for facility closure. The current closure account has \$60,000. It is anticipated that the San Jose Facility will close in FY 2007 and will cost approximately \$50,000 leaving \$10,000 in the Facility Closure Account. The estimated cost to close the remaining two facilities, when the time comes, is \$80,000 (\$50,000 for the Sunnyvale facility and \$30,000 for the San Martin facility). The FY 2007 apportionment (\$70,000) for abandoned waste disposal will be redirected to the Facility Closure Account maintained by Countywide HHW Program to satisfy Permit-by-Rule requirements. This portion of the funds shall be distributed directly to the Countywide HHW Program. This would be a one-time cost from the AB939 Implementation Fee funding.

## **5. VARIABLE COST PER CAR**

The Variable Cost Per Car is the cost associated with actual labor, waste disposal, transportation and other services provided to the residents at the County HHW Collection Facilities and Temporary Events. This portion of the funds shall be distributed directly to the Countywide HHW Program. The Variable Cost Per Car is estimated to be \$76 per car for Fiscal Year 2007. The estimated cost per car will be adjusted annually to reflect actual service costs. After fixed costs and facility closure costs are allocated on a per household basis, the variable cost per car will be used to calculate the costs to service 3% of households across all participating jurisdictions. If the level of 3% of households is not reached, the Countywide HHW Program will use the remaining balance of funds, in cooperation with the CITIES, to increase public outreach and/or provide additional services in that jurisdiction the following year.

## **6. AVAILABLE DISCRETIONARY FUNDING**

The Available Discretionary Funding portion will be allocated based on the tons of waste generated within each jurisdiction and after allocation of fixed cost, facility closure cost and variable per car cost. Available Discretionary Funds will be paid as directed by each jurisdiction. Available Discretionary Funds must be used for HHW purposes. Options for how to spend these funds include, but are not limited to, increasing the number of residents served in the jurisdiction by the Countywide HHW Program, subsidizing curbside used motor oil collection, electronic waste collection, universal waste collection, emergency HHW services, funding HHW public education, or providing special programs such as door-to-door collection of HHW for the elderly and/or persons with disabilities.

## **7. PROGRAM FUNDING PASS-THROUGH**

Annual funding calculations include HHW Fees collected on behalf of all County jurisdictions. CITIES, at their option, may participate in the Countywide HHW Program by entering into the AGENCY AGREEMENT FOR COUNTYWIDE HOUSEHOLD HAZARDOUS WASTE COLLECTION PROGRAM. CITIES not participating in the Agency Agreement will receive their pro-rata share of funding received by the COUNTY from the HHW Fee, with the exception of funds for the abandoned waste cost, described above.

If CITIES not participating in the AGENCY AGREEMENT FOR COUNTYWIDE HOUSEHOLD HAZARDOUS WASTE COLLECTION PROGRAM desire to permit residents to participate in HHW Program services on an emergency basis, then services to these residents will be provided on a cost recovery basis. A charge equal to the established rates charged by the Countywide HHW Program to Conditionally Exempt Small Quantity Generators will be billed to the CITIES. A CITIES' representative must call the Countywide HHW Program appointment line to schedule an appointment for the resident. The pro-rata share of liability will be shared as

defined in Section 28 of AGENCY AGREEMENT FOR COUNTYWIDE  
HOUSEHOLD HAZARDOUS WASTE COLLECTION PROGRAM and as  
described in Exhibit D.

## **EXHIBIT D**

### **SECTION 28 OF AGENCY AGREEMENT FOR COUNTYWIDE HOUSEHOLD HAZARDOUS WASTE COLLECTION PROGRAM**

#### **HOLD HARMLESS AND INDEMNIFICATION**

In lieu of and notwithstanding the pro rata risk allocation which might otherwise be imposed between CITY and COUNTY pursuant to Government Code Section 895.6, the parties agree that all losses or liabilities incurred by a party shall not be shared pro rata but instead COUNTY and CITY agree that pursuant to Government Code Section 895.4, each of the parties hereto shall fully indemnify and hold each of the other parties, their officers, board members, employees and agents, harmless from any claim, expense or cost, damage or liability imposed for injury (as defined by Government Code Section 810.8) occurring by reason of the negligent acts or omissions or willful misconduct of the indemnifying party, its officers, employees or agents, under or in connection with or arising out of any work, authority or jurisdiction delegated to such party under this Agreement. No party, nor any officer, board member, employee or agent thereof shall be responsible for any damage or liability occurring by reason of the negligent acts or omissions or willful misconduct of the other parties hereto, their officers, board members, employees or agents, under or in connection with or arising out of any work authority or jurisdiction delegated to such other parties under this Agreement.

Additionally, CITY shall indemnify COUNTY for CITY's apportioned share of any liability incurred and attributed to the Countywide HHW Program for the transportation, treatment, or disposal of the household hazardous waste, once the waste has been accepted by a licensed hazardous waste hauler. Apportionment for disposal liability shall be determined by each participating jurisdiction's pro rata proportion of household participation in the Program. Apportionment for transportation and treatment liability shall be determined by each participating jurisdiction's pro rata household participation at the event where the waste was generated. COUNTY will use reasonable efforts to obtain recovery from all available resources, including insurance, of any liable hauler or liable disposal facility operator. No liability shall be apportioned to CITY for transportation, treatment or disposal in any case where COUNTY has contracted for such services and has failed to require the contractor to maintain the insurance requirements set forth in Section 25 above.

CITY shall further indemnify COUNTY for CITY's apportioned share of liability incurred and attributed to the Countywide HHW Program for the transportation, treatment or disposal of household hazardous waste at corporate sponsored events where non-county resident employees of the corporate sponsor are authorized to participate in the event. Liability for the nonresident portion of the disposal of waste shall be shared by the cities and the county as described above. The nonresident portion shall be determined by calculating the percentage of nonresidents participating

in the event. This percentage will then be subtracted from the total liability for the household hazardous waste prior to assessing CITY's apportioned share of any liability for the household hazardous waste.

COUNTY shall require CESQGs and Nonprofit Charitable Reusers to indemnify COUNTY for their apportioned share of any liability incurred and attributed to the Countywide HHW Program for the transportation, treatment, or disposal of their hazardous waste, once the waste has been accepted by a licensed hazardous waste hauler. The CESQG and Nonprofit Charitable Reuser portion of the waste shall be determined by calculating the percentage, by weight, of the total household hazardous waste accepted by the CoHHW Program. This percentage will be used to calculate the portion of liability attributed to CESQGs and Nonprofit Charitable Reusers and will be subtracted from the total liability prior to assessing CITY's apportioned share of any liability for household hazardous waste.

**AGENCY AGREEMENT FOR COUNTYWIDE  
HOUSEHOLD HAZARDOUS WASTE  
COLLECTION PROGRAM**

This Agreement is made by and between the City of Milpitas (CITY or Participating Jurisdiction) and the County of Santa Clara (COUNTY) on the \_\_\_\_\_ day of \_\_\_\_\_ 2006.

**RECITALS**

WHEREAS, the County Board of Supervisors has approved a Countywide Household Hazardous Waste Collection Program whereby residents of the County and participating jurisdictions will have an opportunity to safely dispose of household hazardous wastes, regardless of the specific location at which the collection has been scheduled; and

WHEREAS, the participating jurisdictions desire to provide residents with convenient opportunities to safely dispose of their household hazardous waste (HHW) in order to encourage the proper disposal of toxic products, and avoid unauthorized or improper disposal in the garbage, sanitary sewer, storm drain system, or on the ground, in a manner which creates a health or environmental hazard; and

WHEREAS, the participating jurisdictions desire to provide a safe, convenient, and economical means for residents to dispose of household hazardous wastes. These wastes include, but are not limited to, common household products such as household cleaning products, spot remover, furniture polish, solvents, oven cleaner, pesticides, oil based paints, motor oil, antifreeze, car batteries, mercury thermostats, fluorescent lamps containing mercury, household batteries, and electronic waste. Residents of the CITY listed above will be eligible to bring household hazardous wastes to any household hazardous waste collection event or facility where these wastes will be accepted for proper disposal as described below; and

WHEREAS, the participating jurisdictions desire to schedule Household Hazardous Waste Collection Events (Events) for residents for FY 2007 through FY 2009 (July 1, 2006 - June 30, 2009); and

WHEREAS, the participating jurisdictions desire to provide household hazardous waste collection services to a minimum of 3% of the households per fiscal year in each participating jurisdiction; and

WHEREAS, the County Board of Supervisors has approved a Countywide AB939 Household Hazardous Waste Fee (AB939 HHW Fee), as authorized by Public Resources Code 41901, to be collected at \$2.22 in FY 2007 and \$1.85 in FY 2008 and FY 2009 on each ton of waste landfilled or incinerated within the county, received at any non-disposal or collection facility located within the county and subsequently transported for disposal or incineration outside of the county, collected



from any location within the county by a solid waste hauler operating pursuant to a franchise, contract, license, or permit issued by any local jurisdiction and subsequently transported for disposal or incineration outside of the county, or removed from any location in the county by any person or business for disposal or incineration outside the county.

NOW, THEREFORE, CITY and COUNTY OF SANTA CLARA AGREE AS FOLLOWS:

## **1. PURPOSE**

The purpose of this Agreement is to state the terms and conditions under which CITY will participate in the Countywide Household Hazardous Waste Collection Program (CoHHW Program) available to its residents. Participating jurisdictions are those jurisdictions that enter into an AGENCY AGREEMENT FOR COUNTYWIDE HOUSEHOLD HAZARDOUS WASTE COLLECTION PROGRAM.

## **2. PROGRAM FUNDING SOURCE**

HHW Program services are directly mandated under AB939, which establishes statutory authority to provide for funding to support planning and implementation of integrated waste management programs. The AB939 HHW Fee, \$2.22 per ton in FY 2007 and \$1.85 per ton in FY 2008 and FY 2009, collected as part of the AGENCY AGREEMENT FOR COUNTYWIDE AB939 IMPLEMENTATION FEE will be the primary source of funding for CoHHW Program services.

Funds derived from the AB939 HHW Fee will be allocated among five types of CoHHW Program service costs as follows:

- A. Fixed Program Costs will be apportioned based on the number of households in each participating jurisdiction. The number of households will be determined at the beginning of each Fiscal Year by statistics compiled by the Department of Finance, Demographic Research Unit in its most recent Report, "Population Estimates for California Cities and Counties."
- B. Abandoned Waste Disposal Costs will fund disposal of HHW illegally abandoned at nonprofit charitable reuse organizations. The existing fund balance of \$210,000 from previous years will fund Abandoned Waste Disposal Costs for Fiscal Years 2007 to 2009. The \$.12 per household Abandoned Waste Disposal apportionment for Fiscal Year 2007 will be redirected to the Facility Closure Cost Account. The apportionment for Fiscal Years 2008 to 2009 will be redirected to the City Discretionary Fund.
- C. Facility Closure Cost Account will cover the estimated cost of closing the three County Household Hazardous Waste Collection Facilities (CoHHWCF) when the

time comes. The \$.12 per household Abandoned Waste Disposal apportionment for Fiscal Year 2007 will be redirected to this account to satisfy Permit By Rule requirements [California Code of Regulations, Title 22, sections 67450.25 (a) (2) (E) and 66265.110-66265.115].

- D. Variable Cost Per Car to provide a base level service to 3% of households in all participating jurisdictions.
- E. Available Discretionary Funding funded on tonnage generated per participating jurisdiction.

The projected Fiscal Year 2007 AB939 HHW Fee funding allocation by jurisdiction is set out in Attachment A.

### **3. FIXED PROGRAM COST**

Fixed Program Costs shall be \$1.68, \$1.73, and \$1.77 per household per jurisdiction for Fiscal Years 2007, 2008 and 2009 respectively. Estimated HHW Fixed Costs by Fiscal Year are projected for Fiscal Years 2007 through 2009 in Attachment B. Fixed Program Costs may include, but are not limited to six (6) CoHHW Program staff members, facility leasing costs, vehicle lease costs, office rent, office supplies, county administrative overhead, county legal counsel, program publicity, training costs, equipment and facility maintenance and union negotiated salary and benefit increases.

### **4. ABANDONED WASTE DISPOSAL COST**

The existing unexpended non-profit abandoned waste fund balance of \$210,000 will fund the next three fiscal years (FY 2007 to 2009) of disposal of HHW illegally abandoned at Nonprofit Charitable Reuser organizations defined in PUBLIC RESOURCES CODE SECTION 41904. The FY 2007 apportionment (\$0.12 per household or \$70,000) will be redirected to the Facility Closure Account. The \$0.12 per household apportionment for Fiscal Years 2008 and 2009 (\$70,000 each year) will be suspended. Funding will be redirected to the City Discretionary Fund.

### **5. FACILITY CLOSURE COST**

The Facility Closure Costs are costs associated with the closing of the three facilities when the time comes and is required by Permit By Rule Regulations. During the first three years of the AB939 Implementation Fee for HHW, \$20,000 per year was set aside to pay for facility closure. The current closure account has \$60,000. It is anticipated that the San Jose Facility will close in FY 2007 and will cost approximately \$50,000 leaving \$10,000 in the Facility Closure Account. The estimated cost to close the remaining two facilities when the time comes is \$80,000 (\$50,000 for the Sunnyvale facility and \$30,000 for the San Martin facility). The FY 2007 apportionment (\$70,000) for abandoned waste disposal will be redirected to the

Facility Closure Account maintained by the Countywide HHW Program. This would be a one-time cost from the AB939 HHW Fee funding.

## **6. VARIABLE COST PER CAR**

The Variable Cost Per Car is the cost associated with actual labor, waste disposal, transportation and other services provided to the residents at the County Household Hazardous Waste Collection Facilities (CoHHWCF) and at Temporary Events. The Variable Cost Per Car is estimated to be approximately \$76 per car for Fiscal Year 2007. The estimated cost per car will be adjusted annually to reflect actual service costs. After Fixed Program Costs and Facility Closure Costs are allocated on a per household basis, the Variable Cost Per Car will be used to calculate the costs to service 3% of households across all participating jurisdictions. If the level of 3% of households is not reached in a particular jurisdiction, the CoHHW Program will use the remaining balance of funds, in cooperation with the CITY that has less than 3% participation levels, to increase public outreach and/or provide additional services in that jurisdiction the following year.

## **7. AVAILABLE DISCRETIONARY FUNDING**

The Available Discretionary Funding portion of the AB939 HHW Fee will be allocated based on the tons of waste generated within each jurisdiction, and after allocation of Fixed Program Costs, Facility Closure Costs, and Variable Per Car Costs. Available Discretionary Funds will be paid as directed by each jurisdiction. Available Discretionary Funds must be used for HHW purposes. Options for how to spend these funds include, but are not limited to, increasing the number of residents served in that jurisdiction by the CoHHW Program, subsidizing curbside used motor oil collection, electronic waste (e-waste) collection, universal waste collection, emergency HHW services, funding HHW public education, or providing special programs such as door-to-door collection of HHW for the elderly and/or persons with disabilities.

## **8. ADMINISTRATION AND PAYMENT OF THE AB939 HHW FEE**

The Santa Clara County Integrated Waste Management Program (IWMP) will administer the AB939 HHW Fee, as part of the existing landfill billing system. Administration and payment will be made in accordance with the AGENCY AGREEMENT FOR COUNTYWIDE AB939 IMPLEMENTATION FEE.

## **9. PROGRAM PUBLICITY**

The CoHHW Program shall have responsibility for developing and coordinating countywide awareness of HHW and Oil Recycling Programs. CoHHW Program public awareness responsibilities shall include, but not be limited to the following activities:

- Serving as the formal contact to the major media.

- Providing participating jurisdictions with educational materials developed for the CoHHW Program.
- Promoting oil and oil filter recycling by developing, purchasing, and distributing educational materials, media relations materials, basic art work and camera ready advertising materials for distribution countywide and for use by jurisdictions.
- Representing the program through educational presentations for schools and businesses and attendance at community events such as local fairs and festivals.
- Providing participating jurisdictions opportunities to review and comment on the development of countywide outreach materials.
- Public education material distribution.

CITY public awareness responsibilities, at the sole discretion of the CITY, shall include, but not be limited to the following activities:

- Providing a copy of HHW promotional materials to the CoHHW Program for review for accuracy and completeness, prior to publication.
- Adapting and distributing the media relations materials developed by the CoHHW Program to local newsletters, newspapers and to the electronic media.
- Providing the CoHHW Program with a copy of locally produced materials.
- Conducting supporting outreach and publicity to attain the 3% goal of household participation.

## **10. DELEGATION OF AUTHORITY**

The Board of Supervisors delegates all CoHHW Program management to the Department of Agriculture and Environmental Management. The Director of the Department of Agriculture and Environmental Management has the authority to execute all vendor contracts necessary to operate the program, to execute any necessary license agreements, to add additional services provided on a cost recovery basis and to terminate any contracts as warranted. All contracts/agreements/amendments shall first be approved by County Counsel and the Office of the County Executive.

## **11. TEMPORARY HHW EVENTS**

COUNTY shall conduct HHW Events at various sites located in Santa Clara County. COUNTY shall obtain all necessary permits and licenses required for the Events and shall provide or contract for the services of properly trained, qualified personnel and hazardous waste haulers, and shall provide or secure suitable equipment and supplies to properly receive, package, label, haul, recycle and dispose of the household hazardous wastes collected at Events.

## **12. HOUSEHOLD HAZARDOUS WASTE COLLECTION FACILITIES**

COUNTY shall conduct collection operations at three County Household Hazardous Waste Collection Facilities (CoHHWCF). The CoHHWCF will operate a reuse program, offering usable materials to the public at no charge. The COUNTY shall obtain all necessary permits and licenses required for the CoHHWCF and shall provide or contract for services, equipment, and supplies to properly receive, package, label, haul, recycle and dispose of wastes collected. The current San Jose facility is expected to close in December, 2006, however a new facility is expected to be ready to provide a seamless transition to a new location.

The CoHHWCFs are located at:

- ♦ *Sunnyvale Recycling Center, 164 Carl Road, Sunnyvale*
- ♦ *13055 Murphy Avenue, San Martin*
- ♦ *1600 S. 10<sup>th</sup> Street, San Jose*

## **13. SMALL BUSINESS RECYCLING AND DISPOSAL PROGRAM**

COUNTY will provide services to accept hazardous waste from Conditionally Exempt Small Quantity Generators (CESQG). A CESQG is defined by federal regulation as a business that generates less than 100 Kilograms (220 lbs.) of hazardous waste or 1 Kilogram (2.2 lbs.) of extremely hazardous waste per month. Eligible businesses within the County will be allowed to bring their hazardous waste to CoHHWCF. This program will not be subsidized by participating jurisdictions. Services to businesses will be provided on a cost recovery basis, which will include program administration, on-site collection, transportation, and disposal costs. COUNTY will assume responsibility for collecting fees from participating businesses. See Attachment D, titled Santa Clara County CESQG Drop-off Price List. The Santa Clara County CESQG Drop-off Price List is subject to change at the discretion of County to reflect increases or decreases in CoHHW Program costs.

## **14. ABANDONED HOUSEHOLD HAZARDOUS WASTE**

The CoHHW Program will allow for the disposal of abandoned HHW by government agencies and nonprofit charitable reusers. Abandoned HHW means a HHW left at a property by an unknown party. Abandoned household hazardous waste does not include waste generated by a known organization or agency in the course of normal business operations such as, but not limited to, the assembly or manufacture of products from new or used materials or the provision of charitable services such as classroom education, meal preparation, and shelter, or the provision of services for a fee. Government agencies will be charged for disposal of abandoned HHW according to the CoHHW Program's published rates for conditionally exempt small quantity generators (CESQGs).

## **15. NONPROFIT CHARITABLE REUSER**

A Nonprofit Charitable Reuser organization, is a nonprofit as defined in Section 501 (c) (3) of the United States Internal Revenue Code, or a distinct operating unit or division of the charitable organization. A Nonprofit Charitable Reuser is further defined as an organization that reuses and recycles donated material and receives more than 50% of its revenues from the handling and sale of those donated goods or materials. In order to qualify as a Nonprofit Charitable Reuser, the business must submit to the Director of Environmental Health a request to be so designated. The Director shall review the request and supporting documentation and shall make a final decision on the designation. COUNTY will accept abandoned HHW from Nonprofit Charitable Reusers and will waive disposal fees on the cost of disposal of the abandoned HHW in an annual amount not to exceed funds available from the Abandoned Waste Disposal Cost funding generated by the AGENCY AGREEMENT FOR COUNTYWIDE AB939 IMPLEMENTATION FEE (Fee). Funding for disposal available to Nonprofit Charitable Reuser shall be on a first come first serve basis. Once the cost for disposal of the abandoned HHW from Nonprofit Charitable Reusers is equal to the available funds collected through the Fee in any one fiscal year, disposal fees shall no longer be waived, and Nonprofit Charitable Reusers shall be charged for disposal of abandoned HHW according to the CoHHW Program's published rates for CESQGs. No additional costs shall be applied to the budget of a participating jurisdiction.

#### **16. WASTES ACCEPTED**

HHW accepted by the CoHHW Program shall be limited to materials as defined in Health and Safety Code Section 25218.1(e) or as later amended, and include, but are not limited to, automotive fluids, automotive and other types of batteries, latex and oil paint, oil filters, garden chemicals, household cleaners, pool chemicals, mercury thermostats, fluorescent lamps containing mercury, household batteries, and other common hazardous consumer products.

#### **17. WASTES NOT ACCEPTED**

Certain hazardous wastes shall not be accepted for collection and disposal. These include, but are not limited to, compressed gas cylinders larger than 5 gallons, radioactive materials, and explosives. Other wastes not accepted by the CoHHW Program are wastes generated as part of operating a business, including a home operated business, except that waste from CESQGs as provided for in Section 13 above shall be accepted.

#### **18. ADDITIONAL SERVICES UNDER THIS AGREEMENT**

CITY may elect to augment funding provided for in this Agreement with CITY funds. Additional services shall be made available upon written agreement between the CITY's authorized representative and the Director of the Department of Agriculture and Environmental Management. Additional services may include, but are not limited to, additional appointments (charged at the variable cost per car rate), Door-

to-Door HHW Collection, Used Oil Filter Collection, Universal Waste Collection, Electronic Waste Collection, and Abandoned Waste Collection.

CITY agrees to augment up to an additional \$ 0.00 to the Countywide HHW Program during Fiscal Year 2007 for the purpose of increased resident participation above the 3% service level at the scheduled collection dates listed in Attachment C. Augmentation will be calculated at the Variable Cost Per Car rate which is estimated at \$76.00 per car. Fiscal Years 2008 and 2009 funding augmentations shall be agreed upon in writing by the Director of the Department of Agriculture and Environmental Management and the designated CITY representative. Other services will be charged on a cost recovery basis.

At the end of each fiscal year, a final annual cost statement shall be prepared by COUNTY and issued to CITY by November 30th. The annual cost statement will take into consideration costs incurred on behalf of CITY for additional services and all payments made by CITY to COUNTY. If any balance is owed to COUNTY, it will be due within 30 days following receipt of the annual cost statement. If any credit is owed to CITY, COUNTY will refund that amount to CITY within 30 days following delivery of the annual cost statement.

#### **19. INFORMATION AND APPOINTMENT LINE**

COUNTY will operate a telephone information and appointment desk Monday through Friday, from the hours of 8:30 a.m. to 4:30 p.m. The information service will register residents for the Temporary HHW Events and CoHHWCF and provide information about hazardous household materials. CITY will be notified when indicated resident participation approaches the 3% base level of service.

#### **20. SCHEDULING AND SITE SELECTION**

COUNTY shall work with CITY to determine the date(s) of Temporary Events and collections at the CoHHWCF. CITY shall coordinate with COUNTY in locating and securing sites for Temporary HHW Events. It is recognized that some of the jurisdictions participating in the CoHHW Program may not have appropriate sites available. A proposed HHW schedule for Fiscal Year 2007 of Temporary Events and collections at CoHHWCF is included as Attachment C. COUNTY will schedule an adequate number of collection days to serve the 3% level of service in each participating jurisdiction.

#### **21. OUTSIDE FUNDING**

During the term of this agreement, COUNTY will seek outside funding sources to begin services that would supplement existing services such as permanent collection sites, equipment, and operational funding. If funding is obtained, the Program will, at COUNTY's discretion, proceed with development of additional programs without affecting CITY's available funding allocation.

## **22. REGIONAL GRANT PARTICIPATION**

The CoHHW Program is hereby given permission by all participating jurisdictions to apply for future grants from the California Integrated Waste Management Board which are available under the California Oil Recycling Enhancement Act of 1991 and all Household Hazardous Waste grants under the California Integrated Waste Management Act. The Countywide HHW Program will act on behalf of all participating jurisdictions, as the lead applicant and grant administrator, and will use the grant funds for the development of a Countywide HHW Program. The CoHHW Program will oversee how the moneys are used and work in cooperation with CITY as to how the funds will be spent. Nothing in this section shall preclude a participating jurisdiction from applying for grant funds in any case where the CoHHW Program does not apply.

## **23. EMERGENCY SERVICES**

Participating jurisdictions, at their option, may desire to provide residents with convenient emergency opportunities to safely dispose of their HHW in the event of a disaster. The purpose of this emergency planning for HHW is to minimize potential public health and safety impacts, as well as to minimize costs and confusion. Attachment E sets out CITY and COUNTY responsibilities for the collection of household hazardous wastes in response to an emergency. CITY shall make good faith efforts to provide the public with information related to the problems associated with HHW. Upon the decision to hold an emergency collection event, it is CITY's responsibility to make a good faith effort to prepare and disseminate the necessary outreach to notify the public of a special emergency event. An emergency collection event shall be initiated by a written request from CITY to COUNTY. Collection events can be scheduled in as little as ten (10) working days of CITY's written request or at an agreed upon date thereafter. The plan is set out in Attachment E, Household Hazardous Waste Emergency Collection Plan.

COUNTY agrees to conduct the event at a mutually agreeable site and time. The COUNTY will obtain the necessary permit from the State Department of Toxic Substances Control, and handle wastes in accordance with State law. COUNTY will bill CITY for all special emergency events on a cost recovery basis and all payments shall be due thirty days following the receipt of the invoice.

## **24. PRIVATE SPONSORED EVENTS**

COUNTY may also secure funding from corporations or agencies to conduct HHW Collection Events for corporate employees and residents of participating jurisdictions. The transportation, treatment and disposal liability for nonresident employee participation in these events shall be shared by all participating jurisdictions and the COUNTY, as described in Section 28 of this agreement. Summary information



concerning these corporate sponsored events will be included in the CoHHW Program's annual report to the participating jurisdictions.

## **25. INSURANCE CERTIFICATES**

Contractors who provide hazardous waste transportation, treatment, or disposal services shall have insurance with the following minimum limits: General Comprehensive - \$1 million per occurrence, \$2 million aggregate; Auto -\$1 million; workers compensation -- statutory limits established by law; and environmental impairment liability -\$1 million per occurrence, \$2 million aggregate. Other contractors shall have insurance in amounts to be determined by COUNTY Insurance Manager, after consultation with CITY. COUNTY shall obtain insurance certificates from each of the contractors prior to the contractor providing service to the program. All insurance certificates shall name CITY, its officers and employees as additional insured.

## **26. WASTE TRACKING AND REPORTING**

Within 30 days following the end of the 2nd quarter, COUNTY will provide a mid-year report to CITY regarding participation rates from each participating jurisdiction. Mid-year and year end reports will outline the types and quantities of waste collected, the amount of waste diverted for reuse or recycling and the waste management method for each waste stream and associated costs for services. COUNTY will prepare a report summarizing program activities which will be delivered to the participating jurisdictions no later than six months after the end of COUNTY's fiscal year.

It will be assumed for cost and reporting purposes that each participating jurisdiction is contributing to the waste stream in proportion to the number of its residents who directly participate. For purposes of any potential disposal liability, each participating jurisdiction shall be deemed a discharger of only its pro rata proportion of household participation in the Program. For example, if the program served 1,000 vehicles from the City of Milpitas and 10,000 vehicles total from all participating jurisdictions, the pro rata portion of household participation from Milpitas would be ten percent. See also Section 28.

COUNTY shall take steps to assure that the bi-annual statements to jurisdictions reflect the funds necessary to cover costs for CITY participation in services scheduled during the next quarter. COUNTY will make every effort to keep the Variable Cost Per Car at approximately \$76.

## **27. PARTICIPATION REPORTING**

COUNTY shall employ means necessary to verify the place of residence of all participants in the CoHHW Program.

## **28. HOLD HARMLESS AND INDEMNIFICATION**

In lieu of and notwithstanding the pro rata risk allocation which might otherwise be imposed between CITY and COUNTY pursuant to Government Code Section 895.6, the parties agree that all losses or liabilities incurred by a party shall not be shared pro rata but instead COUNTY and CITY agree that pursuant to Government Code Section 895.4, each of the parties hereto shall fully indemnify and hold each of the other parties, their officers, board members, employees and agents, harmless from any claim, expense or cost, damage or liability imposed for injury (as defined by Government Code Section 810.8) occurring by reason of the negligent acts or omissions or willful misconduct of the indemnifying party, its officers, employees or agents, under or in connection with or arising out of any work, authority or jurisdiction delegated to such party under this Agreement. No party, nor any officer, board member, employee or agent thereof shall be responsible for any damage or liability occurring by reason of the negligent acts or omissions or willful misconduct of the other parties hereto, their officers, board members, employees or agents, under or in connection with or arising out of any work authority or jurisdiction delegated to such other parties under this Agreement.

Additionally, CITY shall indemnify COUNTY for CITY's apportioned share of any liability incurred and attributed to the Countywide HHW Program for the transportation, treatment, or disposal of the household hazardous waste, once the waste has been accepted by a licensed hazardous waste hauler. Apportionment for disposal liability shall be determined by each participating jurisdiction's pro rata proportion of household participation in the Program. Apportionment for transportation and treatment liability shall be determined by each participating jurisdiction's pro rata household participation at the event where the waste was generated. COUNTY will use reasonable efforts to obtain recovery from all available resources, including insurance, of any liable hauler or liable disposal facility operator. No liability shall be apportioned to CITY for transportation, treatment or disposal in any case where COUNTY has contracted for such services and has failed to require the contractor to maintain the insurance requirements set forth in Section 25 above.

CITY shall further indemnify COUNTY for CITY's apportioned share of liability incurred and attributed to the Countywide HHW Program for the transportation, treatment or disposal of household hazardous waste at corporate sponsored events where non-county resident employees of the corporate sponsor are authorized to participate in the event. Liability for the nonresident portion of the disposal of waste shall be shared by the cities and the county as described above. The nonresident portion shall be determined by calculating the percentage of nonresidents participating in the event. This percentage will then be subtracted from the total liability for the household hazardous waste prior to assessing CITY's apportioned share of any liability for the household hazardous waste.

COUNTY shall require CESQGs and Nonprofit Charitable Reusers to indemnify COUNTY for their apportioned share of any liability incurred and attributed to the

Countywide HHW Program for the transportation, treatment, or disposal of their hazardous waste, once the waste has been accepted by a licensed hazardous waste hauler. The CESQG and Nonprofit Charitable Reuser portion of the waste shall be determined by calculating the percentage, by weight, of the total household hazardous waste accepted by the CoHHW Program. This percentage will be used to calculate the portion of liability attributed to CESQGs and Nonprofit Charitable Reusers and will be subtracted from the total liability prior to assessing CITY's apportioned share of any liability for household hazardous waste.

## **29. TERMINATION**

This Agreement may be terminated by any party upon one-year (365 days) written notice given by July 1<sup>st</sup>. The termination will be effective June 30<sup>th</sup> the following year.

## **30. TERM OF AGREEMENT**

The term of this Agreement shall be from July 1, 2006, to June 30, 2009, or until all revenue from the last quarter's Fee payments has been distributed, whichever is later.

## **31. EXTENSION OF TERM**

This Agreement may be extended for succeeding three-year terms if COUNTY and participating jurisdictions so agree in writing.

## **32. INDEPENDENT CONTRACTOR**

Each party shall perform responsibilities and activities described herein as an independent contractor and not as an officer, agent, servant or employee of any of the parties hereto. Each party shall be solely responsible for the acts and omissions of its officers, agents, employee, contractors and subcontractors, if any. Nothing herein shall be considered as creating a partnership or joint venture between the parties.

## **33. EXECUTION BY COUNTERPART**

This Agreement may be executed in any number of counterparts, each of which shall for all purposes be deemed an original and all of which shall together constitute one and the same instrument.

## **34. CONTROLLING LAW**

This Agreement shall be governed and construed in accordance with the laws of the State of California.

### 35. ENTIRE AGREEMENT

This document embodies the entire Agreement between the parties with respect to the subject matter hereof. No modification of this Agreement shall be effective unless and until modification is evidenced by writing signed by all parties or their assigned designates.

### 36. NOTICES

All notices and communications herein required shall be in writing to the other party as follows, unless expressly changed in writing:

CITY of <u>Milpitas</u>	City Representative	<u>Greg Armendariz</u>
	Representative's Title	<u>Director of Public Works/City Engineer</u>
	City Address	<u>455 E. Calaveras Blvd.</u> <u>Milpitas, CA 95035</u>

Santa Clara County	Greg Van Wassenhove, Director
	Department of Agriculture and Environmental Management
	1553 Berger Drive
	San Jose, CA 95112

#### Attachments:

- A Projected AB939 HHW Fee Fiscal Year 2007
- B Estimated HHW Program Fixed Costs by Fiscal Year
- C HHW Schedule for Fiscal Year 2007
- D Santa Clara County CESQG Drop-off Price List
- E Household Hazardous Waste Emergency Collection Plan

IN WITNESS WHEREOF, the parties have executed this AGENCY  
AGREEMENT FOR COUNTYWIDE HOUSEHOLD HAZARDOUS WASTE  
COLLECTION PROGRAM on the dates as stated below:

"COUNTY"

COUNTY OF SANTA CLARA,  
a political subdivision of the  
State of California

By: \_\_\_\_\_  
James T. Beall, Jr., Chair  
Board of Supervisors

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Phyllis A. Perez  
Clerk of the Board of Supervisors

APPROVED AS TO FORM AND LEGALITY:

Kathy Kretchmer  
Kathy Kretchmer  
Deputy County Counsel  
Date MAR 20 2016

"CITY"

CITY OF \_\_\_\_\_  
a municipal corporation.

by: \_\_\_\_\_

\_\_\_\_\_  
Title: \_\_\_\_\_ Date \_\_\_\_\_

Attachment A Projected AB 939 HHW Fee Fiscal Year 2007

Fiscal Year 2007

Jurisdiction	Number of Households 1/1/2005	3% of HHs	Total Tons for AB939 Fee Share	Annual Revenue \$2.22/ton	Fixed Cost at \$1.68/HH	Facility Closure Cost at 12¢ per HH	Est Variable Cost at \$76/car	City Discretionary Fund
Campbell	16,459	494	36,999.44	\$82,139	\$27,651	\$1,975	\$37,527	\$14,986
Cupertino	19,724	592	39,162.67	\$86,941	\$33,136	\$2,367	\$44,971	\$6,467
Gilroy	14,054	422	53,705.44	\$119,226	\$23,611	\$1,686	\$32,043	\$61,886
Los Altos	10,731	322	20,625.53	\$45,789	\$18,028	\$1,288	\$24,467	\$2,006
Los Altos Hills	3,035	91	4,730.32	\$10,501	\$5,099	\$364	\$6,920	(\$1,881)
Los Gatos	12,579	377	28,231.44	\$62,674	\$21,133	\$1,509	\$28,680	\$11,351
Milpitas	18,095	543	68,717.61	\$152,553	\$30,400	\$2,171	\$41,257	\$78,725
Monte Sereno	1,249	37	1,205.41	\$2,676	\$2,098	\$150	\$2,848	(\$2,420)
Morgan Hill	12,092	363	32,451.91	\$72,043	\$20,315	\$1,451	\$27,570	\$22,708
Mountain View	33,148	994	55,734.21	\$123,730	\$55,689	\$3,978	\$75,577	(\$11,514)
Palo Alto	27,522	-	67,735.18	\$150,372			\$0	\$150,372
San Jose	298,901	8,967	671,783.94	\$1,491,360	\$502,154	\$35,868	\$681,494	\$271,844
Santa Clara	42,454	1,274	134,811.87	\$299,282	\$71,323	\$5,094	\$96,795	\$126,070
Saratoga	11,009	330	16,507.54	\$36,647	\$18,495	\$1,321	\$25,101	(\$8,270)
Sunnyvale	54,476	1,634	97,302.35	\$216,011	\$91,520	\$6,537	\$124,205	(\$6,251)
Unincorporated	31,507	945	55,428.48	\$123,051	\$52,932	\$3,781	\$71,836	(\$5,497)
<b>Countywide Totals</b>	<b>607,035</b>	<b>17,385</b>	<b>1,385,133</b>	<b>\$3,074,996</b>	<b>\$973,582</b>	<b>\$69,542</b>	<b>\$1,321,290</b>	<b>\$710,583</b>

ATTACHMENT B Estimated HHW Fixed Costs By Fiscal Year

FIXED COST		2007	2008	2009
Staff Salary And Benefits	HMPM,HMS (.5 FTE), MA (.5 FTE), HMT (3 FTE), Acct (1.5 FTE), Pub Ed (.5 FTE)	\$668,000	\$681,360	\$694,987
County Admin Overhead	25% of Salary above	\$167,000	\$170,340	\$173,747
County Counsel		\$4,000	\$4,000	\$4,000
Phones and Communications		\$10,000	\$10,000	\$10,000
Web Appoinment System		\$6,000	\$6,000	\$6,000
Office Rent		\$25,000	\$25,000	\$25,000
Supplies Storage		\$2,400	\$2,400	\$2,400
Facilities Lease Costs	SM,SJ,Sun	\$5,000	\$5,000	\$5,000
Facility Impact Fee	\$2.00 per car	\$16,000	\$25,000	\$25,000
Vehicle Lease Costs		\$20,000	\$20,000	\$20,000
Office Supplies		\$20,000	\$20,000	\$20,000
Maintenance		\$10,000	\$10,000	\$10,000
Program Publicity		\$20,000	\$20,000	\$20,000
Staff Training		\$3,000	\$3,000	\$3,000
ESTIMATED ANNUAL TOTAL		\$976,400	\$1,002,100	\$1,019,134

## ATTACHMENT C

## HHW SCHEDULE FOR FISCAL YEAR 2006/2007

2006/Month	Day	Date	Location	Type of Event	County Holidays/ Notes
July	Saturday	1	NO EVENT	NO EVENT	FOURTH OF JULY
	Friday	7	SAN JOSE	PERMANENT	
	Saturday	8	SAN JOSE	PERMANENT	
	Saturday	15	SUNNYVALE	PERMANENT	
	Saturday	22	NO EVENT	NO EVENT	
	Friday	28	SAN JOSE	PERMANENT	
	Saturday	29	SAN JOSE	PERMANENT	
August	Friday	4	SAN MARTIN	PERMANENT	
	Saturday	5	SAN MARTIN	PERMANENT	
	Friday	11	SAN JOSE	PERMANENT	
	Saturday	12	SAN JOSE	PERMANENT	
	Saturday	19	SUNNYVALE	PERMANENT	
	Saturday	26	CUPERTINO	TEMPORARY	
September	Saturday	2	NO EVENT	NO EVENT	SEPT 4/LABOR DAY
	Friday	8	SAN JOSE	PERMANENT	
	Saturday	9	SAN JOSE	PERMANENT	
	Saturday	16	SUNNYVALE	PERMANENT	
	Saturday	23	SANTA CLARA	TEMPORARY	
	Friday	29	SAN JOSE	PERMANENT	
	Saturday	30	SAN JOSE	PERMANENT	
October	Friday	6	SAN MARTIN	PERMANENT	
	Saturday	7	SAN MARTIN	PERMANENT	
	Friday	13	SAN JOSE	PERMANENT	
	Saturday	14	SAN JOSE	PERMANENT	
	Saturday	21	SUNNYVALE	PERMANENT	
	Friday	27	SAN JOSE	PERMANENT	
	Saturday	28	SAN JOSE	PERMANENT	
November	Friday	3	SAN JOSE	PERMANENT	
	Saturday	4	SAN JOSE	PERMANENT	
	Saturday	11	NO EVENT	NO EVENT	NOV 10/VETERANS DAY
	Saturday	18	SUNNYVALE	PERMANENT	
	Saturday	25	NO EVENT	NO EVENT	23 & 24/THANKSGIVING
December	Friday	1	SAN MARTIN	PERMANENT	
	Saturday	2	SAN MARTIN	PERMANENT	
	Friday	8	SAN JOSE	PERMANENT	
	Saturday	9	SAN JOSE	PERMANENT	
	Friday	15	SAN JOSE	PERMANENT	
	Saturday	16	SAN JOSE	PERMANENT	
	Saturday	23	NO EVENT	NO EVENT	DEC 25/CHRISTMAS
	Saturday	30	NO EVENT	NO EVENT	JAN 1/NEW YEARS
2007/Jan	Friday	5	SAN MARTIN	PERMANENT	
	Saturday	6	SAN MARTIN	PERMANENT	
	Friday	12	SAN JOSE	PERMANENT	
	Saturday	13	SAN JOSE	PERMANENT	
	Saturday	20	SUNNYVALE	PERMANENT	
	Saturday	27	NO EVENT	NO EVENT	



# HHW SCHEDULE FOR FISCAL YEAR 2006/2007-continued

2007/Month	Day	Date	Location	Type of Event	County Holidays/ Notes
February	Friday	2	SAN MARTIN	PERMANENT	
	Saturday	3	SAN MARTIN	PERMANENT	
	Friday	9	SAN JOSE	PERMANENT	
	Saturday	10	SAN JOSE	PERMANENT	
	Saturday	17	SUNNYVALE	PERMANENT	
	Friday	23	SAN JOSE	PERMANENT	
	Saturday	24	SAN JOSE	PERMANENT	
March	Friday	2	SAN MARTIN	PERMANENT	
	Saturday	3	SAN MARTIN	PERMANENT	
	Friday	9	SAN JOSE	PERMANENT	
	Saturday	10	SAN JOSE	PERMANENT	
	Saturday	17	SUNNYVALE	PERMANENT	MOUNTAIN VIEW
	Friday	23	SAN JOSE	PERMANENT	
	Saturday	24	SAN JOSE	PERMANENT	
	Saturday	31	NO EVENT	NO EVENT	CAESAR CHAVEZ DAY
April	Friday	6	SAN MARTIN	PERMANENT	
	Saturday	7	SAN MARTIN	PERMANENT	
	Saturday	14	LOS ALTOS	TEMPORARY	
	Saturday	21	SUNNYVALE	PERMANENT	
	Saturday	28	SANTA CLARA	TEMPORARY	
May	Friday	4	SAN MARTIN	PERMANENT	
	Saturday	5	SAN MARTIN	PERMANENT	
	Friday	11	SAN JOSE	PERMANENT	
	Saturday	12	SAN JOSE	PERMANENT	
	Saturday	19	SUNNYVALE	PERMANENT	
	Saturday	26	NO EVENT	NO EVENT	MAY 28/MEMORIAL DAY
June	Friday	1	SAN MARTIN	PERMANENT	
	Saturday	2	SAN MARTIN	PERMANENT	
	Friday	8	SAN JOSE	PERMANENT	
	Saturday	9	SAN JOSE	PERMANENT	
	Saturday	16	SUNNYVALE	PERMANENT	
	Saturday	23	MILPITAS	TEMPORARY	

\*SUBJECT TO CHANGE

Revised 12/8/2005

## Attachment D

## SANTA CLARA COUNTY CESQG DROP-OFF PRICE LIST

HAZARD CATEGORY	DESCRIPTION OF WASTES		ESTIMATE COST
RECYCLE	MOTOR OIL		FREE
	ANTIFREEZE, TRANSMISSION FLUID, HYDRAULIC OIL		\$3.00/GAL
	CAR BATTERIES		\$5.00 EACH
	PCB LIGHT BALLASTS		\$5.50/LB
	MIXED BATTERIES		\$5.50/LB
AEROSOL	AEROSOL CANS		\$4 EA
FLAM LIQUID WITHOUT SOLIDS	POURABLE LIQUIDS--ALCOHOLS, SOLVENTS, GASOLINE, ACETONE, MEK, KEROSENE, DIESEL, CLEAN PAINT THINNER (SLUDGE FREE)		\$7.00/GAL
LATEX	LATEX PAINT	GAL. CHARGED BY AMOUNT OF PAINT (BULKED)	\$8.00/GAL
		QTS. CHARGED BY CONTAINER, REGARDLESS OF AMT. OF PAINT	\$2/ QUART CONTAINER
FLAM LIQUIDS WITH SOLIDS/ HIGH VISCOSITY OIL	POURABLE LIQUIDS WITH SOLIDS--INK (LIQUID), FLUX, DIRTY PAINT THINNER, OIL WITH WATER, MACHINE OIL, COMPRESSOR OIL		\$10/GAL
	OIL BASE PAINT		\$2/ QUART CONTAINER \$10/ 1 GAL CONTAINER
	CONTAINER CHARGE, PRICE REGARDLESS OF AMOUNT OF MATERIAL		\$50/ 5 GAL CONTAINER
	ADHESIVES, ROOFING TAR, SLUDGES/SOLIDS, GREASE, EPOXY PART A (RESIN), INK(POWDERED), EPOXY, RESINS, GLUE		\$2/ QUART CONTAINER \$10/ 1 GAL CONTAINER
	CONTAINER CHARGE, PRICE REGARDLESS OF AMOUNT OF MATERIAL		\$50/ 5 GAL CONTAINER
LAB PACK	LAB CHEMICALS, POISONS, CORROSIVES, NON-CORROSIVE AQUEOUS SOLUTIONS, GLUTARALDEHYDE, PHOTOCHEMICALS, FIXER, DEVELOPER, NEUTRAL CLEANERS, COMPATIBLE MIXTURES, AMMONIA, ACIDS, BASES, METALS (LIQUID OR SOLID), OIL FILTERS, ABSORBANT, CONTAMINATED SOIL, CHLORINATED LIQUIDS, REFRIG. OIL, FREON, COLD STERILE, VAPO STERILE, CONTAMINATED OIL, VAPOR DEGREASER, PAINT RELATED MATERIALS, EPOXY PART B (HARDENER)		\$55/ 1 GAL CONTAINER \$275/ 5 GAL CONTAINER (LIQUID) OR \$5.50/LB (SOLID)
	CONTAINER CHARGE, PRICE REGARDLESS OF AMOUNT OF MATERIAL		
OTHER	PROPANE TANKS		16.4 OZ \$10 5 GAL \$50
	FLOURESCENT TUBES	HANDLING FEE APPLIES	\$0.24/FT + HANDLING FEE
	FIRE EXTINGUISHERS		\$10 SMALL \$20 LARGE
	REACTIVES, OXIDIZERS, MERCURY, EXPLOSIVES, ASBESTOS, RADIOACTIVE MATERIALS, CYANIDES, PRESSURIZED CYLINDERS, PCBs, EMPTY DRUMS		VARIES SEE ED OR PETER
	MINIMUM CHARGE/HANDLING FEE		\$40.00
	HOURLY OFFICE FEE (IF NECESSARY)		\$40.00/HR.

PRICES AS OF 7/01/05. PRICES SUBJECT TO CHANGE. FOR QUESTIONS CALL (408) 299-7300

## **Attachment E**

# **HOUSEHOLD HAZARDOUS WASTE EMERGENCY COLLECTION PLAN**

## **1: PURPOSE**

The purpose of the Household Hazardous Waste Emergency plan is to minimize potential public health and safety impacts, as well as to minimize costs and confusion during an emergency or disaster. This Attachment describes the services the County can provide and the responsibilities of each party for the collection of household hazardous wastes (HHW) in response to an emergency as defined by the local jurisdiction.

Jurisdictions should contact local emergency agencies, the Governor's Office of Emergency Services (OES), and the Department of Toxic Substances Control (DTSC) for more specific information on hazardous materials emergency response.

## **2. Timing of HHW**

While it is important to have special collection opportunities for disaster-related HHW as soon as possible to avoid illegal disposal or harm to people and/or the environment, having an event or service too soon after a disaster may result in low participation. Sufficient public notification, assessment and monitoring of the disaster, and cleanup process by the City HHW Coordinators is essential.

## **3. Public Information/Notification:**

Cities should be prepared to provide the public with information related to the problems associated with HHW along with information about special collection events and services. Upon the decision to hold an emergency collection event, it is the City's responsibility to prepare and deliver the necessary public outreach to notify the public of an upcoming event. A City's public outreach program should evaluate all forms of media including: newspaper ads, posters, flyers, press releases, banners, door -to-door notices, roadside signs, signs on dumpsters, radio public service announcements, and television public access stations. Be aware of communities where multiple language ads will be necessary.

## **4. State HHW Collection Permits**

The State Department of Toxic Substances Control (DTSC) is responsible for issuing the necessary state permits for HHW collection facilities. During an emergency, the County will obtain the necessary emergency permit, for special collection of household hazardous waste, from DTSC through their expedited approval process.

## 5. Collection Events

Temporary collection events can be set-up at various sites including parking lots, city maintenance yards, neighborhoods needing service, and at landfills or a centralized location to service larger segments of the population. Waste collected can be transported with the HHW Program's hazardous waste transportation vehicle. In addition, events can be scheduled at the three existing Countywide Household Hazardous Waste Collection Facilities (CoHHWCF). The following options are available to each participating City.

- Neighborhood Drop-off Events: The County is able to provide localized service to specific areas in need of household hazardous waste collection services. The County will work with City Solid Waste Coordinators to conduct coordinated efforts to residents in the affected area. After a specific event, waste will be transported by County staff or a hazardous waste contractor to an appropriate facility.
- Mobile HHW Event: The County conducts Household Hazardous Waste Collection Event (Events) at various sites located in Santa Clara County throughout the year. Events will be expanded to give priority to disaster victims when requested by the City. The County shall obtain all necessary permits and licenses required for the events and shall provide and/or contract for the services of properly trained personnel and hazardous waste haulers. The County shall also provide or secure suitable equipment and supplies to properly receive, package, label, haul, recycle and dispose of the household hazardous wastes collected at events.
- CoHHWCF: The County operates three permitted HHW collection facilities for the collection and storage of HHW. The current San Jose facility is expected to close in December 2006; however, a new facility is expected to be ready to provide a seamless transition to a new location. The County shall provide or contract for services, equipment, and supplies to properly receive, package, label, haul, recycle and dispose of wastes collected at the CoHHWCF.

The CoHHWCF are located at:

- *Sunnyvale Recycling Center, 164 Carl Ave., Sunnyvale*
- *San Martin, 13055 Murphy Ave, San Martin*
- *San Jose, 1600 S. 10th St., San Jose*

## 6. Costs, Documentation and Reimbursements

Cities will be billed on a cost recovery basis. Costs of emergency events will be tracked and billed separately. Emergency funding applications pending from the State or Federal government for reimbursements in no way relieves the City of responsibility to make timely payment to the County in accordance with the terms of the AGENCY AGREEMENT FOR COUNTYWIDE HOUSEHOLD HAZARDOUS WASTE COLLECTION PROGRAM.

The County agrees to provide the City with a detailed accounting of services provided for an emergency collection. Documentation will track the time and materials of staff, outside contractor expenses, and quantities and types of waste collected to demonstrate that the wastes were generated above and beyond existing collection programs.

Services to businesses will be provided on a cost recovery basis and according to Attachment D of the AGENCY AGREEMENT FOR COUNTYWIDE HOUSEHOLD HAZARDOUS WASTE COLLECTION PROGRAM, which includes program administration, on-site collection, transportation, and disposal costs. The County will assume responsibility for collecting fees from participating businesses.

## **7. State and Federal Assistance and Funds**

It is the city's responsibility to pursue reimbursement from State or Federal agencies.

### State Office of Emergency Services (OES)

The OES is responsible for requesting assistance on behalf of local jurisdictions for resources beyond the capability of the jurisdiction. State assistance may include assistance available from State, Federal, or private sources. If a local jurisdiction is declared a state disaster area, and the local jurisdiction deems that the needs of the disaster response are beyond its capabilities, then the local jurisdiction can request assistance and reimbursement of costs from OES.

### Follow Standardized Emergency Management System (SEMS)

All requests and emergency responses must be in accordance with the SEMS. The State Department of Toxic Substances Control may have funding available for hazardous waste response and collection.

### Federal Assistance

If a state disaster area is declared a federal disaster, then federal funding assistance may be available through the State OES. Funding and assistance may be available from Federal agencies such as FEMA and the U.S. EPA.

Damage estimates: The city should provide to the State OES estimates of damages and a "scope of work requested." It is recommended that the local HHW coordinator meet ahead of time with local emergency agencies or State OES contacts regarding the proper procedures and wording of requests for assistance.

Funding Process: The funding process may vary depending on the unique circumstances of the disaster. The process can either be the traditional FEMA reimbursement process, or by direct assistance from EPA.

## REFERENCES

California Integrated Waste Management Board, Integrated Waste Management Disaster Plan: Guidance for local government on disaster debris management, January 1997.

## **Emergency Planning Contacts and Personnel**

**Primary County Contact:** County of Santa Clara  
Department of Environmental Health  
Household Hazardous Waste Program  
Rob D'Arcy  
Hazardous Materials Program Manager  
408-918-1967

**Responsibility:** Coordinate and establish proper collection and disposal methods for household hazardous waste. Assess the need for HHW and CESQG services in consultation with the City and other operations.

### **Information and Public Affairs**

2800 Meadowview Road  
Sacramento, CA 95832  
916/262-1843  
916/262-1841 (voice/TDD)

### **OES - Coastal Region**

1300 Clay Street, Suite 400  
Oakland, CA 94612  
510/286-0895  
510/286-0877 (voice/TDD)

**CHEMTREC**      Emergency number, (800) 424-9300  
Non-emergency (800) 262-8200

Chemtrec is a public service established by the Chemical Manufacturers Association. The Center was developed as a resource for obtaining immediate emergency response information to mitigate accidental chemical releases, and as a means for emergency responders to obtain technical assistance from chemical industry product safety specialists, emergency response coordinators, toxicologists, physicians, and other industry experts to safely mitigate incidents involving chemicals.